

**VOLUNTARY CLEANUP CONTRACT
11-[PCAS#]-NRP**

**IN THE MATTER OF
[SITE NAME], [COUNTY NAME] County
and
[COMPANY NAME]**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and [Company Name], with respect to the Property located at [Address], South Carolina. The Property includes approximately [Acres] acres identified by Tax Map Serial Number [#####]. In entering this Contract, the Department relies on the representations contained in the "Non Responsible Party Application for Voluntary Cleanup Contract" of [Submitted Date], and any amendments thereto, by [Company Name], which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This Contract is entered into pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. § 44-56-710 et. seq. (as amended); the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq. (as amended), the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq., and the South Carolina Pollution Control Act, § 48-1-10 et. seq.

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used herein shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code Ann. §44-56-710 et. seq. (as amended), and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et. seq. (as amended), the S.C. Pollution Control Act, S.C. Code Ann. .§ 48-1-10, et. seq. (as amended), [the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. §

Comment [chp1]: Include only if applicable

44-2-10, et. seq. (as amended)] or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et. seq.

- A. "[The Company – abbreviated]" means [Company Name – full legal name]
- B. "Beneficiaries" means [The Company]'s Non-Responsible Party lenders, signatories, parents, subsidiaries, and successors, including new purchasers, lessees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site
- C. "Contamination" means the presence of a contaminant, pollutant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any Contamination present on, or under, the Property as of the execution date of this Contract.
- G. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that is subject to the ownership, prospective ownership, or possessory or contractual interest of [The Company] or its Beneficiaries.
- H. "Segregated Sources" means drums, tanks, or similar discrete containers that potentially hold substances that may cause Contamination upon release to the

Comment [chp2]: If contract is with individual(s), replace with: "Beneficiaries" means [The Individual's] Non-Responsible Party lenders, employees, heirs, personal representatives, executors, devisees, and successors, including new purchasers, lessors, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.

environment.

- I. "Site" means all areas where a contaminant has been released, deposited, stored, disposed of, or placed or otherwise comes to be located; "site" does not include any consumer product in consumer use or any vessel, as defined in CERCLA section 101 (28).
- J. "Waste Materials" means any Contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

- 2. Based on the information known by or provided to the Department, the following findings are asserted for purposes of this Contract:

- A. Owners and Operators: The owners and operators of the Property include the following:

[oldest pertinent owner/ operator]	[Year] to [Year]
[next owner/ operator]	[Year] to [Year]
	[use "TAB" to add more rows]

ETC.

- B. Property and Surrounding Areas: The Property is bounded generally by [Location and description of the Property]. [More history]

- C. Investigations / Reports: Legal Issues – Consent Agreements, RCRA permit [More PERTINENT History... keep adding paragraphs as necessary...title them as applicable]
- D. Applicant Identification: [The Company] is a [state of company's organization or incorporated] ["business corporation," etc. - modify according to applicant] with its principal place of business located at [address of headquarters]. [The Company] affirms that it has the financial resources to conduct the response action pursuant to this Contract.
- E. Proposed Redevelopment: [The Company] will acquire the Property and intends to [Proposed future use of the Property.]

BONA FIDE PROSPECTIVE PURCHASER STATUS

3. [The Company] certifies that [it is OR it and its members are] not a current owner of the Property, or parent, successor or subsidiary of a current or past owner of the Property; [is/are] not a Responsible Party for the site, or a parent, successor or subsidiary of a Responsible Party for the site; and [has/have] not had any involvement with the Property in the past other than activities performed in anticipation of participation in the Voluntary Cleanup Program. [The Company] also certifies that [it is] OR [it and its members are] eligible to be a Bona Fide Prospective Purchaser for the Property.

Comment [S3]: Page: 1
For a corporation

Comment [S4]: Page: 1
For a limited liability company

Comment [S5]: Page: 1
For a corporation

Comment [S6]: Page: 1
For a Limited liability company

RESPONSE ACTION

4. [The Company] agrees to conduct the response actions specified in the subparagraphs below. An initial Work Plan shall be submitted by [The Company], or its designee, within thirty (30) days after the date of execution of this Contract by the Department, or such earlier or later date if approved by the Department's project manager. A Report of the assessment results shall be submitted by [The Company], or its designee in accordance with the schedule provided in the initial Work Plan. [The

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Company] acknowledges that the assessment may find distributions of Existing Contamination requiring additional assessment and/or corrective action on the Property that cannot be anticipated with this Contract. [The Company] agrees to perform the additional assessment and/or corrective action consistent with the intended uses of the Property under the purview of this Contract; however, [The Company] may seek an amendment of this Contract to clarify its further responsibilities. [The Company] shall perform all actions required by this Contract, and any related actions of [The Company]'s choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department.

A. Work Plan Logistics:

- 1). The Work Plan(s) shall set forth a schedule and methods for assessment and corrective action activities detailed herein.
- 2). The Work Plan(s) shall be submitted to the Department in the form of one hard copy and one electronic copy of the entire Work Plan on a compact disk (in .pdf format).
- 3). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes, regulations, and permitting requirements (e.g., stormwater management and waste disposal regulations). [The Company] shall identify and obtain the applicable permits before beginning any action.
- 4). The Work Plan(s) shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 5). The Work Plan(s) shall provide detailed information about the proposed sampling points, collection methods, analytical methods, quality assurance procedures, and other pertinent details of the assessment and/or corrective measures activities consistent with the following:
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.

- b). All monitoring wells and groundwater sampling points shall be constructed in accordance with 25 S.C. code Ann. Regs. R.61-71, the South Carolina Well Standards. The Work Plan shall provide sufficient detail to support issuance of the well approvals by the Department.
- c). The laboratory analyses for samples taken pursuant to the Work Plan are specified in the media-specific sub-paragraphs below, but may include any of the following:
 - i. the full EPA Target Analyte List (TAL);
 - i). EPA Target Analyte List excluding cyanide (TAL-Metals);
 - ii. the full EPA Target Compound List (TCL);
 - i). EPA Target Compound List Volatile Organic Compounds (TCL-VOCs);
 - ii). EPA Target Compound List Semi-Volatile Organic Compounds (TCL-SVOCs);
 - iii). EPA Target Compound List Pesticides (TCL-Pesticides);
 - iv). EPA Target Compound List Polychlorinated Biphenyls (TCL-PCBs).
 - iii. [and/or any other special parameter testing based on site history]
- d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. The applicable Protection of Groundwater SSL for soil samples shall be the "MCL-Based SSL", if listed. If the applicable screening criteria are lower than achievable detections levels, the analytical method shall use the lowest achievable detection levels.

- 6). The Work Plan shall include the names, addresses, and telephone numbers of [The Company]'s consulting firm(s), analytical laboratories, and [The

Company]'s contact person for matters relating to this Contract and the Work Plan.

- a). The analytical laboratory shall possess applicable Certification defined in 25A S.C. Code Regs. R.61-81, for the test methods specified in the Work Plan.
- b). [The Company] shall notify the Department in writing of any changes concerning the consulting firm(s), contact person(s), or laboratory identified in the Work Plan.
- 7). The Department will notify [The Company] in writing of approvals or deficiencies in the Work Plan.
- 8). [The Company], or its designee, shall respond in writing within thirty (30) days of receipt of any comments on the Work Plan by the Department.
- 9). [The Company] shall begin implementation of the Work Plan as soon as reasonably possible after receipt of written approval of the Work Plan by the Department.
- 10). [The Company] shall inform the Department at least five (5) working days in advance of all field activities conducted pursuant to the Work Plan, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.
- 11). [The Company] shall preserve items on the Property that may: 1) provide evidence of a Potentially Responsible Party's involvement at the Site; 2) lead to the discovery of other areas of Contamination at the Site; or 3) contain environmental information related to the Site. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. [The Company] shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction of said items.

B. Report Logistics

- 1). Report(s) shall be prepared in accordance with accepted industry standards and shall be certified by signature and seal of a Professional Engineer or Professional Geologist duly licensed in South Carolina.
- 2). The Report(s) of assessment and/or corrective measures activities shall include a discussion of investigation methods and any deviations from the Department approved Work Plan. The Report shall also include tables and figures to summarize all data, a surveyed map documenting sampling locations, documentation of field observations including well core logs, sample descriptions, field screening results, and all laboratory analytical data.
- 3). All Report(s) shall be submitted to the Department in the form of one hardcopy and one electronic copy of the entire Report on a compact disk (in .pdf format).

C. Assess Waste Materials and Segregated Sources:

- 1). [The Company] shall characterize all Waste Materials and Segregated Sources identified below. Assessment shall include an evaluation of contaminant concentrations and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable, or as specified below.
 - a). [List any Waste Materials and Segregated Sources as identified from the Phase I Report and site visit, and specify characterization information needed. Example: Slag pile, estimate volume and collect two samples for TCLP analysis.]
 - b). [list any additional Waste Materials and characterization requirements, etc.]
- 2). [The Company] shall also characterize any other Waste Material and Segregated Sources that may be discovered on the Property at any time during assessment, corrective action, or development activities in accordance with a Department approved plan.
- 3). Upon discovery of any Segregated Source that has not yet released all contents to the environment, [The Company] shall expeditiously stabilize or remove the

Segregated Source from the Property

- 4). [The Company] shall immediately notify the Department if a release of Contamination occurs as a result of its assessment, stabilization or removal actions. [The Company] shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

D. Conduct a well survey:

- 1). [The Company] shall map all public and private wells used for drinking water supply within a one-half mile radius of the Property, and wells used for irrigation or other non-drinking water use within a one-quarter mile radius.
- 2). [The Company] shall report sufficient information to the Department to allow the Department to secure permission to sample the wells. At a minimum, this information shall include the: 1) Location of the well; 2) Identity and mailing address of the well owner; and, 3) Telephone number, if publicly available or otherwise known to [The Company], of the well owner or occupant of the residence served by the well.

E. Assess soil quality across the Property:

- 1). [The Company] shall collect and analyze a minimum of [XX] soil samples from [XX] locations on the Property. [The Company] shall collect one surface soil sample (0-1 foot below ground surface) and one subsurface soil sample (2 foot minimum depth) from each of the following locations:
 - a). A presumed background location [specify analysis for inorganics or off-site source parameters, if applicable].
 - b). [List other locations and specified analytical parameters, etc., add subparagraphs as needed]
- 2). Unless otherwise specified above, each surface soil sample shall be analyzed for TAL-Metals and SVOCs. Each subsurface sample shall be analyzed for TAL-Metals, VOCs and SVOCs [plus any other parameters as determined

based on site history]. A minimum of [XXX] surface and [XXX] subsurface samples from a probable impacted area [specify location(s) based on site history] shall be analyzed for the full EPA-TAL and EPA-TCL.

- 3). Soil quality results shall be compared to the Residential and Industrial Screening Levels and to the applicable Protection of Groundwater SSL.

F. Assess groundwater quality:

- 1). [The Company] shall assess groundwater quality and flow direction across the Property. Assessment shall include samples from a minimum of [XX] [permanent/ temporary] monitoring wells to be installed as [singular or well pairs in xx locations etc]. [The well pairs shall consist of a well screened to bracket the water table, and a well screened at the bedrock-saprolite interface or upper confining layer, etc.] [In the event that groundwater is not encountered above the bedrock /confining layer etc., the shallower wells may be omitted after consultation with the Department.] Specific locations shall be as follows:
 - a). a location presumed to be hydraulically downgradient of a potential off-site source;
 - b). a presumed background location, [which may be the same location as the background soil location above.]
 - c). [specify other locations to include potential source areas]
- 2). Samples from all groundwater monitoring wells shall be analyzed for TAL-Metals, VOCs and SVOCs [plus any other parameters as determined based on site history]. In addition, [XXX] downgradient well pairs shall have both samples analyzed for the full TAL/TCL parameters [specify location(s) based on site history].
- 3). Groundwater quality results shall be compared to the primary maximum contaminant level (MCL) standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, or, if not specified in R.61-58, to the Regional Screening Tables values for "Tapwater."

G. Assess Sediment and Surface water quality:

- 1). [The Company] shall collect and analyze [XX] sediments and [XX] water samples from water bodies on the Property. The samples shall be collected as:
 - a). [XX] sediment and corresponding water samples from the sample location at the most downgradient portion of the [canal, stream, drainage ditch] on the Property, etc.
 - b). etc
- 2). All surface water and sediment samples shall be analyzed for the TAL-Metals, VOCs and SVOCs [specify location(s) and analytical parameters based on site history].
- 3). Surface water quality results shall be compared to the values in the SC Water Classifications and Standards, R.61-68, based on consumption of either “water and organisms” or “organisms only” as applicable for the water body. Sediment samples shall be compared to the Ecological Screening Values in EPA Region 4 Ecological Risk Assessment – Supplement to RAGS.

H. Evaluate and control potential impacts to indoor air:

- 1). [The Company] shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine “Significant concentrations” based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting [residential] [commercial] exposures consistent with the building construction [proposed to be used] on the Property.
- 2). [FOR SAMPLES WHERE NO BUILDING IS IN PLACE] [The Company]’s evaluation shall, unless otherwise agreed to by the Department, consist of collection and analysis of [a minimum of-number] soil gas samples from the proposed footprint of buildings to be constructed on the Property over areas

potentially subject to Vapor Intrusion. Soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10^{-6} risk for shallow gas samples (using an depth-appropriate attenuation factor). The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance.

- 3). [FOR SAMPLES WHERE EXISTING BUILDINGS] This evaluation shall, unless otherwise agreed to by the Department, consist of collection and analysis of indoor air samples from within the building during two separate sampling events approximately six months apart. One sample shall be collected per every 1000 square feet of building footprint potentially subject to Vapor Intrusion. One sampling event shall be in the winter. Each sampling event shall include collection of [number] indoor air samples for laboratory analysis of all site-related volatile organic constituents. The samples collected for laboratory analysis may use either active or passive collection methods provided the same protocol is used for both sampling events. The method shall be capable of detecting gas concentrations at screening levels indicative of a 10^{-6} risk. The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance.
- 4). The Department may allow [The Company] to implement vapor intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department's sole discretion, offer a similar degree of data usability.
- 5). [The Company] shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the [predicted] [measured] indoor air concentration exceeds a 10^{-6} risk calculated for [occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs)] [residential exposure]. The Department shall give reasonable consideration of

data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

I. Institute reasonable Contamination control measures:

- 1). [The Company] shall stabilize or remove from the Property any Segregated Sources of Contamination that have not yet released all contents to the environment.
 - a). The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
 - b). [The Company] shall document the characterization results and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.
- 2). [The Company] shall take reasonable measures to limit or prevent human exposure to Existing Contamination on the Property:
 - a). Corrective measures shall be required for Waste Materials and Contamination present in any media on the Property with concentrations in excess of appropriate human-health [and ecological-ONLY IF WARRANTED BY TYPE OF SITE AND PROPOSED USE, SUCH AS A NATURE PRESERVE] risk-based exposure standards with plausibly complete routes of exposure.
 - i. [The Company] may request Department approval to conduct a site-specific risk assessment to determine levels of Contamination that are acceptable for the intended use of the Property. The risk assessment shall be conducted in accordance with EPA Risk Assessment Guidance for Superfund. Prior to conducting the risk assessment, [The Company] shall submit for Department approval, an overview of risk assessment assumptions including identification of contaminant exposure routes, the type and duration of possible exposures, the magnitude of exposure, and any data gaps that need to be addressed

to complete the risk assessment.

- ii. Corrective measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the Contamination. The corrective measures shall be proposed in a Corrective Measures Plan to be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
- iii. Upon completion of any corrective measures, [The Company] shall provide a Corrective Measures Report to document satisfactory completion of the corrective measures for Department review and approval prior to obtaining a Certificate of Completion.

J. Monitor and/or abandon the monitoring wells:

- 1). [The Company] shall implement a groundwater-monitoring program if required by the Department. Continued monitoring requirements will be based on the Department's determination of potential adverse effects on nearby receptors, i.e., individuals that are presently or potentially exposed to Contamination.
- 2). The Department will determine the frequency and duration of the monitoring program on a case-specific basis.
- 3). [The Company] shall abandon the monitoring well(s) when the Department determines there are no further needs for wells. The wells shall be abandoned in accordance with R.61-71 of the South Carolina Well Standards.

K. [ONLY FOR PROPERTIES WITH RP VCC IN PLACE] Complete required activities in the event of a Responsible Party default:

- 1). Ongoing Responsible Party activities under [VCC # NUMBER OF RP Contract, Consent Agreement, RCRA permit, etc.] may substantially satisfy the requirements in sub-paragraphs [4.B, 4.C, etc.] above. Therefore, it is agreed that response action completed by the Responsible Parties that meet the

conditions of this Contract shall be deemed to satisfy the requirements on [The Company]. The Department shall have sole discretion in determining the adequacy of the Responsible Party's response action towards completing the activities required by this Contract.

- 2). The Department will provide written notification to [The Company] if more than 180 consecutive days elapse without substantial progress, or the Department otherwise determines the Responsible Party activities are inadequate.
- 3). [The Company] shall respond in writing within thirty days to the Department's notification with a workplan for completing the unfulfilled requirements of this Contract.
- 4). [ANY OTHER SITE SPECIFIC ACTIVITIES THE NRP WOULD BE REQUIRED TO DO IF THE RP CONTRACT FALLS THROUGH]

HEALTH AND SAFETY PLAN

5. [The Company] shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. The Health and Safety Plan shall be submitted to the Department in the form of one hard copy and one electronic copy of the Health and Safety Plan on compact disk (in .pdf format). [The Company] agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by [The Company].

PUBLIC PARTICIPATION

6. [The Company] and the Department will encourage public participation to implement this Contract as follows:

- A. The Department will provide notice, seek public comment, and initiate a thirty-day claim contribution notification period in accordance with established procedures

consistent with S.C. Code Ann. §44-56-750 upon signature of this Contract by [The Company].

B. [The Company] shall erect a sign at major entrances onto the Property or other locations routinely accessible by the public. The sign(s) shall be erected no later than one day after the Department's public announcement about the Contract in a newspaper of general circulation in the community.

- 1). The sign will state "Voluntary Cleanup Project by [Company Name] under Voluntary Cleanup Contract 11-[PCAS#]-NRP with the South Carolina Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of [The Company]. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".
- 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Property without intruding onto the Property.
- 3). [The Company] shall submit photographs of the sign(s) and a Property drawing showing the location(s) of the signs. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). [The Company] agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). [The Company] shall maintain the sign(s) in legible condition and at visible locations throughout the duration of the Contract period until a Certificate of Completion is issued on the Property.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, [The Company] shall restore the sign within two (2) days to its original location, or other publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. [The Company] shall submit periodic written updates to the Department's project manager until such time as all activities related to the Property are complete pursuant to this Contract. The first update shall be due within [XXX] days of [Work Plan approval] [the execution date of this Contract] and semi-annually thereafter.
- A. The updates may be in summary letter format, but should include information about:
- 1). The actions taken under this Contract during the previous reporting period;
 - 2). Actions scheduled to be taken in the next reporting period;
 - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period regardless of whether the data was collected pursuant to this Contract; and,
 - 4). A description of any environmental problems experienced during the previous reporting period and the actions taken to resolve them.
- B. The Department's project manager may allow an extended schedule between updates based on case specific conditions.

SCHEDULE

8. [The Company] shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances cause a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize Contamination or prevent unacceptable exposures. [The Company] shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. [The Company] or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Declaration) for the Property if Contamination exceeds levels

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acceptable for unrestricted use after completing the response actions pursuant to this Contract. Contaminant levels acceptable for unrestricted use shall be the Screening Levels for Resident Soil as specified in the EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites for soil, and the primary maximum contaminant level (MCL) standards in the South Carolina State Primary Drinking Water Regulations, R.61-58 for groundwater. *[OR as applicable, replace first two sentences with any of the following: (1) {where sampling is limited to only those areas where contaminant releases are suspected to have occurred} [The Company] or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Declaration) for the Property to restrict the use of the Property from residential, recreational, agricultural, child day-car, and adult day-care use; (2) {where assessment is limited due to existing buildings, or other factors and potential exists for releases in the inaccessible areas}: [The Company] or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Declaration) for the Property to maintain (the existing building, pavement, etc as applicable) as an engineering control; (3) {where groundwater contamination above MCL is already documented} [The Company] or its Beneficiaries shall enter, and record, a Declaration of Covenants and Restrictions (Declaration) for the Property to prohibit the use of groundwater on the Property. [IF ANY OF THESE OPTIONS ARE USED, ALSO ADD: Additional restrictions may be required based on the response actions completed under this Contract.]* The recorded Declaration shall be incorporated into this Contract as an Appendix and shall be implemented as follows:

A. The Department shall prepare and sign the Declaration prior to providing it to [The Company]. An authorized representative of [The Company] or its Beneficiaries shall sign the Declaration within ten (10) days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.

B. [The Company] or its Beneficiaries shall record the executed Declaration with the

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Registrar of Deeds or Mesne Conveyance for the county where the Property is located.

- C. [The Company] or its Beneficiaries shall provide a copy of the recorded Declaration to the Department within sixty (60) days of the Department's execution. The copy shall show the date and Book and Page number where the Declaration has been recorded.
- D. In the event that Contamination exceeds levels acceptable for unrestricted use (Regional Screening Levels for residential use) on a portion of the Property, [The Company] or its Beneficiaries may create a new parcel of that portion of the property that will be subject to the Declaration.
- E. The Declaration shall be noted on the master deed of any planned development for the Property and noted, or referenced thereafter, on each individual deed of property subdivided from the Property and subject to the Declaration.
- F. The Declaration shall reserve a right of entry and inspection for [The Company] or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). [The Company] or its Beneficiaries shall ensure that the restrictions established by the Declaration remain on any subdivided property.
 - 2). [The Company] or its Beneficiaries shall create a procedure to provide a single point of contact responsible for documenting current land use and compliance with the Declaration regardless of the Property's ownership status. The procedure shall be reviewed and approved by the Department before it is implemented.
- G. The Declaration shall provide that the Department has an irrevocable right of access

to the Property after [The Company] acquires the Property, and such right of access shall remain until remediation is accomplished for unrestricted use and monitoring is no longer required. Such access shall extend to the Department's authorized representatives and all persons performing response actions on the Property under the Department's oversight.

- H. [The Company] or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually document the Property's land use and compliance with the Declaration to the Department. The report shall be submitted by May 31st in a manner and form prescribed by the Department.
- I. The Department may amend the Declaration in response to changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Property change; however, said amendment shall not be applied retroactively unless expressly provided for in the legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment to the Declaration shall be duly executed and recorded using procedures similar to those detailed above.

NOTIFICATION

- 10. All notices required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party, throughout the term of the Contract. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. All other forms of notice shall be deemed sufficiently given if delivered at the address shown below, or at

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such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail by which notice shall be deemed to occur seven (7) days after the postmark date; 2) Certified or Registered Mail by which notice shall be deemed to occur on the date received as shown on the receipt; 3) Commercial delivery service company by which notice shall be deemed to occur on the date received as shown on the receipt; or, 4) hand delivery to the other party.

A. All correspondence, notices, work plans, and reports shall be submitted to:

[Project Manager]
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

B. All correspondence and notices to [The Company] shall be submitted to [The Company]'s designated contact person who as of the effective date of this Contract shall be:

[Contact]

FINANCIAL REIMBURSEMENT

11. [INCLUDE ONLY IF APPLICABLE] [The Company] agrees to reimburse the Department for outstanding environmental response costs in the amount of [write out the dollar amount and include in the parenthesis too (\$0.00)] upon acquisition of any portion of the Property. Payment shall be made in full to the Department not later than thirty (30) days after said acquisition.

12. [The Company] or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C.Code Ann. §44-56-750 (D). The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereto, and may include costs related to this Contract and incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to [The Company] on a quarterly basis. [INCLUDE THE FOLLOWING ONLY IF NRP IS ELIGIBLE LOCAL GOVERNMENT OR NON-PROFIT--In recognition of [The Company]'s non-profit status, the Department waives reimbursement of oversight costs, exclusive of the cost incurred for public participation. The Department reserves the right to re-instate oversight billing upon thirty-day notice to [The Company]; however, said billing shall not include any costs incurred by the Department prior to receipt of the notice.] All costs are payable within thirty (30) days of the Department's invoice submitted to:

[Name]

[Billing Contact Information]

A. Failure to submit timely payment for costs upon receipt of the Department's invoice is grounds for termination of the Contract pursuant to paragraph 16 **herein**.

Comment [S7]: Page: 1
Check to make sure paragraph # refers to
CONTRACT TERMINATION paragraph

B. Payment for costs incurred by the Department pursuant to this Contract shall become immediately due upon termination of the Contract by any party pursuant to paragraph **16 herein**.

Comment [S8]: Page: 1
Check to make sure paragraph # refers to
CONTRACT TERMINATION paragraph

ACCESS TO THE PROPERTY

13. [The Company] agrees the Department has an irrevocable right of access to the VCC 11-[PCAS#]-NRP
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Property for environmental response matters after [The Company] acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required, and shall extend to the Department's authorized representatives and all other persons performing response actions on the Property under the Department's oversight.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

14. A Certificate of Completion shall be issued to [The Company] or its Beneficiaries for the Property under this Contract as follows:

- A. [The Company] or its Beneficiaries shall request a Certificate of Completion pursuant to S.C. Code Ann. § 44-56-750(C)(1) after the response actions are completed and any required Declarations are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
- B. Pursuant to S.C. Code Ann. § 44-56-750(C)(1) the Department shall issue the Certificate of Completion with its covenant not to sue upon determining that [The Company] or its Beneficiaries has successfully and completely complied with the Contract and the voluntary cleanup approved under S.C. Code Ann. § 44-56-710 through 760 (as amended).
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions required under this Contract are complete and a required Declaration has been recorded but all actions under this Contract have not been completed due to Property-specific circumstances.
 - 1). A Provisional Certificate of Completion will include specific performance standards that [The Company] or its Beneficiaries shall continue to meet.

- 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if [The Company] or its Beneficiaries do not satisfactorily complete the requirements of the Contract as stipulated in the Provisional Certificate of Completion.

ECONOMIC BENEFITS REPORTING

14. [The Company] or its Beneficiaries shall report information to the Department that demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two (2) years after the execution date of this Contract, and annually thereafter until two (2) years after redevelopment of the Property is complete. [The Company] shall summarize the new operations at the Property, the number of jobs created, the amount of property taxes paid, and the total amount invested in the Property for property acquisition and capital improvements.

CONTRACT OBLIGATIONS AND PROTECTIONS INURE

15. The terms, conditions, obligations and protections of this Contract apply to and inure to the benefit of the Department, [The Company], and its Beneficiaries as set forth below. The following stipulations apply to ensure the transition of all obligations and protections to successive Beneficiaries for any portion of the Property:
 - A. [The Company] or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
 - B. [The Company] and its Beneficiaries shall not allow residential occupancy on any portion of the Property prior to obtaining the Certificate of Completion or a Provisional Certificate of Completion specific to that portion of the Property allowing

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residential occupancy.

C. If the Certificate of Completion has not been issued, [The Company] or its Beneficiaries shall request approval from the Department prior to transferring the obligations and protections of this Contract to a new person or entity. The Department shall not unreasonably withhold its approval upon receipt of a Non-Responsible Party Application for Voluntary Cleanup Contract documenting that the new person or entity:

- 1). Is not a Responsible Party for the Site;
- 2). Has sufficient resources to complete the activities of this Contract;
- 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract,
- 4). Will assume the protections and all obligations of this Contract and,
- 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.

D. If the Certificate of Completion has been issued and the portion of the Property is subject to a Declaration or other ongoing obligation pursuant to this Contract, [The Company] or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty days after the effective date of the ownership change or other possessory transfer of the Property.

- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract and the Declaration, and that it will assume the ongoing obligations and protections of this Contract.
- 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual residential or commercial use provided the Declaration is noted on the master deed for the planned development, and the Department has approved the procedure for a single point of contact responsible for

documenting current land use and compliance with the Covenant.

- E. If a Certificate of Completion has been issued and the Property is not subject to a Declaration or other continuing obligation pursuant to this Contract, no notification is required.

CONTRACT TERMINATION

16. [The Company], its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty days advance written notice to the other party. Termination shall be subject to the following:

- A. The Department may not terminate this Contract without cause and before termination, shall provide [The Company] or its Beneficiaries an opportunity to correct the cause(s) for termination, which may include, but is not limited to, the following:
- 1). Failure to complete the terms and conditions of this Contract;
 - 2). Change in [The Company]'s or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;
 - 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
 - 4). Failure of [The Company] or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by [The Company] or its Beneficiaries;
 - 5). Knowingly providing the Department with false or incomplete information or knowing failure to disclose material information;
 - 6). Failure by [The Company] or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this Contract; or,

- 7). Failure by [The Company] or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the property as determined by the Department upon consideration of [The Company]'s or its Beneficiaries' marketing efforts, regional economic conditions, and other pertinent information on the Property.
- B. Should [The Company] or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards caused or contributed by [The Company] or its Beneficiaries have been stabilized or mitigated such that the Property does not pose hazards to human health or the environment.
- C. Termination of this Contract by any party does not waive the Department's authority to require response action under any applicable state or federal law.
- D. Termination of this Contract by any party does not end the obligations of [The Company] or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract. Payment for such costs shall become immediately due.
- E. Upon termination, the protections provided under this Contract shall be null and void as to any party who participated in actions giving rise to termination of the Contract. Revocation of protections shall also apply to that party's lenders, parents, subsidiaries, , and successors, including lessees, heirs, devisees, and other parties taking an interest in the Property through that party who participated in actions giving rise to termination of the contract. The protections will continue for any party who has received protections through a Certificate of Completion for this Contract, and who did not participate in the actions giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. [The Company] and its Beneficiaries are entitled to the protections and benefits in regard to Existing Contamination provided by South Carolina statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:
 - 1). Protection from contribution claims under CERCLA Section 113.42 U.S.C. § 9613 and § 44-56-200, et seq.
 - 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
 - 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.
- B. Effective on the date the Certificate of Completion is issued by the Department.
 - 1). The Department's covenant not to sue [The Company] and its Beneficiaries for Existing Contamination but not for any Contamination, releases and consequences caused or contributed by [The Company] or its Beneficiaries.
 - 2). Specific tax credits or additional benefits expressly contingent in South Carolina statutes on issuance of the Certificate of Completion.
- C. These Protections and Benefits do not apply to any Contamination, releases, and consequences caused or contributed by [The Company] or its Beneficiaries. The Department retains all rights under State and Federal laws to compel [The Company] and its Beneficiaries to perform or pay for response activity for any Contamination, releases and consequences caused or contributed by [The Company] or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, or shall be construed as, a release or VCC 11-[PCAS#]-NRP
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covenant not to sue for any claim or cause of action, past or future, that the Department may have against any person, firm, or corporation other than [The Company] and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than [The Company] and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY [THE COMPANY]

19. [The Company] retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. [The Company] and its Beneficiaries specifically deny responsibility for response costs or damages resulting from Existing Contamination except for Contamination, releases, and consequences they cause or contribute to the Property. However, [The Company] and its Beneficiaries agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. [The Company] and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not caused or contributed by [The Company] or its Beneficiaries. [The Company] and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered Contamination. For purposes of this clause, newly discovered Contamination means finding types of Contamination not previously identified at the Property or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY [THE COMPANY] AND ITS BENEFICIARIES

21. In consideration of the protections from the Department under this Contract, [The Company] and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Property pursuant to this Contract. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or negligent acts or omissions, or the Department's willful breach of this Contract.

[Remainder of page left blank]

February 1, 2012 Model NRP VCC

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY:

DATE:

Daphne G. Neel, Chief
Bureau of Land and Waste Management

DATE:

Reviewed by Office of General Counsel

[COMPANY NAME]

BY:

DATE:

Printed Name and Title

APPENDIX A

[The Company]

Application for Non-Responsible Party Voluntary Cleanup Contract

[date of application]